

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4101 of 1996

FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE M. H. KADRI.

1. Whether Reporters of Local Papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

UNITED INDIA INSURANCE CO LTD

Versus

JADIBEN JADAVJIBHAI, DECD. THRO' HEIR, RATILAL J DODIYA

Appearance:

MR PV NANAVATI for the appellant.

MR MA KHARADI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of Order: 13/02/97

ORAL JUDGMENT

Appellant, United India Insurance Co. Ltd. has filed this appeal under S.173 of the Motor Vehicles Act, 1988 read with S.110B of the Motor Vehicles Act, 1939, challenging the judgment and award dated 25.4.1996, passed by the Motor Accident Claim Tribunal (Aux.), Gondal in Motor Accident Claim Petition No. 54/87, whereby the Tribunal awarded compensation of Rs.70,600/- with proportionate costs and interest at the rate of 12% per annum from the date of the petition till realisation to the applicant who is the heir of deceased Jadiben Jadavjibhai.

2. Decedased Jadiben Jadavjibhai sustained bodily injuries in the vehicular accident which took place on 19.1.1984 at about 9.00 a.m. near tiles factory on Jetpur Road at Gondal. At the relevant time the deceased was coming to her house from village side and was walking on the left side of the road. At that point of time, motorcycle bearing RTO registration No. GJY 9787 which was driven by opponent no.1 in rash and negligent manner dashed against the deceased and she was thrown on the road and due to the impact she sustained injuries over left leg and head. She was admitted in the hospital of Dr.Borad at Gondal on 19.1.1984 and was discharged from that hospital on 1.2.1984. The deceased had sustained communitied fracture of femur of her left leg and she had sustained two injuries of the nature of incised wound on the left knee and on the left eyebrow. After discharge from the hospital of Dr.Borad, the deceased was admitted in Government Hospital at Gondal, where she was kept as indoor patient for 7 to 8 days. As per the case of the claimant, even after discharge from the Government Hospital at Gondal, there were complications in the condition of the deceased and therefore, she was taken to the Civil Hospital at Ahmedabad for treatment. After treatment at Ahmedabad Civil Hospital, the deceased was taken to her native place at Gondal, where she expired on 2.4.1984. It is the case of the claimant that the deceased died due to the complications which had arisen on account of the injuries sustained by her in the accident. The appellant-applicant therefore, claimed compensation of Rs.80,000/- under different heads, by filing the abovereferred MAC Petition before the Tribunal at Rajkot. The said claim petition came to be transferred to the MAC Tribunal (Aux.) at Gondal.

3. Opponent No.2 did not file any written statement to the claim petition. Opponent No.1 filed written statement at Ex.12 contending inter alia that the accident had not occurred at all, and it had not taken place due to rash and negligent driving on the part of the driver of the motorcycle. It is stated that the deceased herself was negligent and therefore, the heirs of the deceased were not

entitled to claim compensation. Opponent No.3 - Insurance Company filed its written statement at Ex.19, inter alia contending that it is not true that the vehicle in question was insured with Opponent No.3 insurance company. It was denied that opponent no.1 was rash and negligent in driving the motorcycle at the time of the accident. It is further stated that the driver of the motorcycle was not holding valid driving licence at the relevant time, and in absence of licence, the insurance company cannot be held liable to pay compensation.

4. The Tribunal framed issues at Ex.21. In support of the claim petition, the applicant was examined at Ex.28. In support of his case, the claimant examined Dr. Narendrakumar Dhanjibhai Borad at Ex.45. The claimant also produced documentary evidence consisting of the certificate issued by the Government Hospital, Gondal, the F.I.R., panchnamas, charge-sheet, death certificate, RTO Registration book, driving licence, insurance policy, injury certificate, etc.

5. The Tribunal, after appreciating the oral as well as documentary evidence, awarded to the applicant compensation of Rs.70,600/- with proportionate costs and interest at 12% per annum, to be recovered from the original opponents jointly and severally, which has given rise to filing of this appeal by the Insurance Company.

6. It is submitted by the learned Advocate for the appellant Mr.P.V.Nanavati that there is no nexus between the accidental injuries and the cause of death of the deceased. It is submitted that even Dr.Borad who had operated the deceased for the accidental injury of fracture of femur of left leg has deposed that a person who had sustained comminuted fracture of femur would not die in ordinary circumstances. Therefore, there is substance in the argument of the learned Counsel for the appellant that the deceased did not die because of the accidental injuries sustained by her. However, it is true that the deceased died within a span of 3 months from the date of sustaining accidental injuries. It is an admitted fact that the deceased was hospitalised for nearly two months because of the serious injury of fracture of femur sustained by her. It is the case of the applicant that the deceased was supporting him by doing household work.

7. It is not in dispute that the deceased had sustained injuries on 19.1.1984 as a result of rash and negligent driving of motorcycle bearing RTO registration No. GJY 9787. The deceased was at first admitted in the hospital of Dr.Borad and thereafter in the Government Hospital at Gondal. She had sustained serious injury of fracture of left femur

and some other injuries of left knee and left eyebrow. The deceased died at the age of 50 or 55 years. Bearing in mind the fact that the deceased died within a span of 3 months from the date of the accident, it would be just and adequate to award compensation to the applicant in the lumpsum of Rs.45,000/- with proportionate costs and interest on the said amount at 12% per annum from the date of the claim petition till realisation. Therefore, the award of the Tribunal awarding compensation of Rs.70600/- with 12% interest and proportionate costs is modified and in place of Rs.70,600/- it is directed that the applicant shall be entitled to compensation of Rs.45,000/- for the death of the deceased.

8. As a result of the foregoing discussion, this appeal is partly allowed. The Award of the Motor Accident Claims Tribunal (Aux.), Rajkot at Gondal in MAC Petition No. 54 of 1987 is modified and instead of Rs.70,600/- awarded by the Tribunal, the applicant shall be entitled to compensation of Rs.45,000/- with 12% interest per annum from the date of the claim petition till realisation and proportionate costs, to be recovered jointly and severally from the original opponents. There shall be no order as to costs of this first appeal.

Out of the total amount of compensation with interest costs, the Tribunal is directed to invest Rs.75,000/- in Fixed Deposit with any nationalised bank in the name of the applicant for a period of 3 years and 6 months, on condition that the same shall not be encashed prematurely, and no loan or advance shall be taken/sanctioned against the said deposit. However, the applicant shall be entitled to receive regular periodical interest thereon. Remaining amount of compensation shall be paid to the applicant by means of account payee cheque drawn in his name. Learned Advocate for the appellant Mr.PV Nanavati, has stated that after the judgment and award of the Tribunal, the appellant has deposited the amount of Rs.1,79,480/- before the MAC Tribunal at Gondal on 18.10.1996. As the award of the Tribunal is modified, the appellant shall be at liberty to withdraw the surplus amount which remains after making payment of the amount awarded by this Court in this judgment.

9. It is clarified that this judgment will not be cited as precedent in any other matter because in the peculiar facts and circumstances of this case, lumpsum compensation of Rs.45,000/- is awarded to the applicant for the untimely death of the deceased.

abraham.

